

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Harry Lee Green,

C.A. No. 3:05-1941-CMC-JRM

Plaintiff,

V.

OPINION AND ORDER

Matthew D. Gatling;

Martha McElveen Horne;

Patty Patterson;

City Police Department; and

Sumter-Lee Regional Detention Center,

Defendants.

Plaintiff in this matter is a resident of Sumter, South Carolina, and has brought this action pursuant to 42 U.S.C. § 1983.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(b), (d), and (e), DSC, this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation. On July 22, 2005, the Magistrate Judge issued a Report recommending that this case be dismissed without prejudice and without issuance and service of process. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. In response to the Report and Recommendation, Plaintiff filed his objections August 3, 2005.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part,

the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

The court has carefully considered Plaintiff's objections and finds them to be without merit. After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge with one exception. The state conviction seems to have been for simple assault rather than assault and battery. However, with that exception, the court adopts and incorporates the Report and Recommendation by reference in this order. Plaintiff's complaint fails to state a viable claim under 42 U.S.C. § 1983.

IT IS THEREFORE ORDERED that this matter is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 17, 2005

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